

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JAIME COVARRUBIAS	§	
v.	§	CIVIL ACTION NO. 6:12cv156
VICTORIA WALLACE, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The Plaintiff Jaime Covarrubias, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. There are three Defendants remaining in the lawsuit - Victoria Wallace, John Wilson, and Gabriel Obrigbo.

Covarrubias' lawsuit concerns a use of force incident which occurred on April 26, 2010. The Defendants have filed a motion for summary judgment based on their affidavits concerning the incident and have invoked the defenses of qualified and Eleventh Amendment immunity. Covarrubias filed a response arguing that the Defendants' version of the facts is incorrect and that the Defendants are not entitled to qualified immunity. He did not contest the claim of Eleventh Amendment immunity.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the Defendants' motion for summary judgment be granted as to any claims for monetary damages brought against the Defendants in their official capacities, because such claims are barred by

Eleventh Amendment immunity. The Magistrate Judge further recommended that the Defendants' motion for summary judgment be denied in all other respects.

Copies of the Magistrate Judge's Report were provided to the parties but no objections have been received; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 53) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Defendants' motion for summary judgment (docket no. 31) is hereby GRANTED only as to any claims for monetary damages which are brought against the Defendants in their official capacities. Such claims are hereby DISMISSED with prejudice as barred by Eleventh Amendment immunity. It is further

ORDERED that the Defendants' motion for summary judgment is in all other respects DENIED.

It is SO ORDERED.

SIGNED this 5th day of August, 2013.

A handwritten signature in black ink, appearing to read "Michael H. Schneider", is written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE